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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

BEIJING MEISHE NETWORK TECHNOLOGY

CO. LTD.,

Plaintiff,

V.

TIKTOK INC., TIKTOK PTE. LTD.,
BYTEDANCE LTD., AND BYTEDANCE INC.

Defendants.

Case No. 3:23-cv-06012-SI

REDACTED VERSION

**DEFENDANTS' NOTICE OF MOTION
AND MOTION FOR SANCTIONS
PURSUANT TO RULE 37 OF THE
FEDERAL RULES OF CIVIL
PROCEDURE AND THE COURT'S
INHERENT POWER TO ISSUE
SANCTIONS**

Date: August 15, 2025

Time: 10:00 a.m.

Place: Courtroom 1, 17th Floor

Before: Hon. Judge Susan Illston

Trial Date: October 27, 2025

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1 *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*,
2 259 F.3d 1101 (9th Cir. 2001)12

3 *Yu v. ByteDance Inc.*,
4 759 F. Supp. 3d 992 (N.D. Cal. Dec. 12, 2024).....11, 18, 20

4 **Statutes**

5 17 U.S.C. § 410(c)16

6 18 U.S.C. § 1839(3)17

7 **Rules**

8 Fed. R. Civ. P. 334

9 Fed. R. Civ. P. 37*passim*

NOTICE OF MOTION/MOTION: PLEASE TAKE NOTICE that on August 15, 2025, at 10:00 a.m., Defendants will and hereby do move under the Court's inherent power and F.R.C.P. 37 for an Order granting terminating or, alternatively, evidentiary sanctions. The motion is based on the memoranda in support, declaration and exhibits, and other evidence and argument as the Court permits.

MEMORANDUM IN SUPPORT

I. INTRODUCTION AND SUMMARY OF ARGUMENTS

Plaintiff Beijing Meishe Network Technology Co. Ltd. (“Meishe”), a small Chinese company, brought this lawsuit four years ago for copyright infringement and trade secret misappropriation contending that source code used in Defendants’ TikTok app contains source code similar to or derived from Meishe’s video and audio editing software. To establish standing and meet its burden on the most basic element of these claims, Meishe asserted in its first pleading and in sworn statements throughout this litigation that it “is, and at all material times hereto, has been the owner of the” asserted source code. ECF 1 at ¶ 1. Although Meishe was formed and is owned in part by another Chinese developer of video editing software, China Digital Video (Beijing) Limited (hereafter, “XAT”), Meishe objected to any discovery into its close association with XAT. [REDACTED]

During the past few weeks, however, evidence emerged showing each of these sworn statements was *false*. First, far from supporting Meishe’s ownership of the source code “at all material times,” the only

Perhaps recognizing the problem this created for its case, Meishe announced *after* the close of fact discovery an entirely new theory of ownership, asserting in one of its expert's reports that a purported

Meishe then served [REDACTED] incredibly,

1 [REDACTED]
2 [REDACTED]. Second, Meishe's Chief Technology Officer admitted [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED] Third, despite his sworn representations to the contrary,
6 [REDACTED]
7 [REDACTED]

8 These are not minor transgressions concerning ancillary facts—they are material falsehoods,
9 perpetuated in this case for years, and made or authorized by Meishe's apex executives. With fact discovery
10 closed, Meishe's deception has made it impossible to test the veracity of its ever-shifting positions on
11 multiple core issues: (1) whether Meishe owned the disputed trade secrets and copyrights at all relevant
12 times, (2) whether any of the asserted code qualifies as a trade secret, (3) the scope of the asserted code that
13 is copyrightable or protected by trade secret, and (4) whether Meishe's pre-suit analysis provided a
14 good-faith basis to launch this massively expensive, multi-year campaign against Defendants. Meishe's
15 deceit is an affront to the judicial process and has caused severe prejudice to Defendants that cannot be
16 cured. Even if discovery were to be reopened and all of the costs borne by Meishe, its willful, bad faith
17 misconduct has made it impossible to rely upon future proceedings to serve their truth-seeking role.
18 Accordingly, pursuant to the Court's inherent powers and Rule 37, Defendants respectfully request that the
19 Court sanction Meishe by terminating this case. In the alternative, and at minimum, Defendants request that
20 the Court issue evidentiary sanctions.

21 **II. FACTUAL BACKGROUND**

22 A. [REDACTED]
23 [REDACTED]

24 Meishe brought this case nearly four years ago claiming that former Meishe engineer, Mr. Xie Jing,
25 "accessed Meishe's source code and downloaded the source code" on June 3, 2015, five days before leaving
26 the company. ECF 433 ¶¶ 85–88, 162–65. Meishe repeatedly alleged in every complaint filed that "Meishe
27 is, and at all material times hereto, has been the owner of the" asserted code. ECF 1 at ¶ 1; ECF 6 (Aug. 4,
28 2021 First Am. Compl.) at ¶ 1 (same); ECF 9 (Aug. 12, 2021 Second Am. Compl.) at ¶ 1 (same); ECF 235

1 (April 20, 2023 Third Am. Compl.) at ¶ 1 (same); ECF 433 (May 14, 2024 Fourth Am. Compl.) at ¶ 1; *id.*
 2 at ¶¶ 3, 94 (same for copyrights); *id.* at ¶¶ 149, 190 (same for trade secrets).

3 Just before this lawsuit, Meishe initiated parallel litigation in China. ECF 433 at ¶ 127. To support
 4 its claimed ownership rights, Meishe submitted a one-paragraph declaration to the Chinese court, which
 5 Meishe produced here. *See* Ex. A; Ex. B at 148:6–14 (confirming Meishe submitted it).¹ [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]

10 Chinese courts do not provide the same discovery rights that exist under the Federal Rules, so
 11 Defendants sought to discover through this case evidence of the agreement underlying the claimed
 12 [REDACTED] transfer. In response, Meishe produced a Computer Software Copyright Transfer Contract
 13 (“Transfer Agreement”). *See* Ex. C. [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]

20 Defendants also served an interrogatory requiring Meishe to “[i]dentify all current, former, and
 21 claimed ownership interests . . . , and all agreements and negotiations related to those actual or claimed
 22 ownership interests and/or changes in ownership interest” in the asserted code. *See* Ex. D at Interrogatory
 23 No. 14. [REDACTED]
 24 [REDACTED]
 25 [REDACTED]
 26 [REDACTED]

27
 28 ¹ All Exhibits cited herein are attached to the accompanying Declaration of Kurt G. Calia.

1 [REDACTED]. See Ex. E at 81–82 (responses to Interrogatory No. 14); *see also* Exs. A, C, F, and G
 2 (documents cited in response to Interrogatory No. 14).² Meishe’s response to the interrogatory, which it was
 3 obligated to answer “fully in writing under oath,” Fed. R. Civ. P. 33(b)(3), [REDACTED]
 4 [REDACTED]
 5 [REDACTED] See Ex. E at 81–82. [REDACTED]

6 [REDACTED], Meishe’s Sixth Amended Initial Disclosures, served February 24, 2025, [REDACTED]

7 [REDACTED] See Ex. L.

8 Meishe was also ordered by the Special Master to submit a declaration identifying “whether any
 9 documents *or agreements* exist that bear on the terms of Meishe’s separation from XAT . . . including any
 10 documents addressing intellectual property as between Meishe and XAT.” ECF 519 at 32 (emphasis added).
 11 Meishe submitted a declaration from its CEO, Mr. Zheng, executed on January 27, 2025. Ex H. [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]

15 [REDACTED].³

16 At his April 14, 2025 deposition, in which Mr. Zheng was designated to testify as Meishe’s Rule
 17 30(b)(6) designee on the topics of [REDACTED]
 18 [REDACTED]
 19 [REDACTED]. See Ex. B at 122:13–123:6. [REDACTED]
 20 [REDACTED]
 21
 22
 23

24 ² MEISHE-TT_00000160–MEISHE-TT_00000161 is also cited in Meishe’s responses to Interrogatory
 25 No. 14, but it is a duplicate of the Transfer Agreement.

26 ³ Defendants pursued discovery directly from XAT through Hague Convention letters rogatory but
 27 received only 17 documents, many of which Meishe had already produced. Defendants received no
 28 technical documents or code, [REDACTED]. See Ex. I at TTI-BDI 00932063–64. [REDACTED]

[REDACTED] Ex. BB at TTI-BDI_00932468 (emphasis added).

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED].

7 When asked about the discrepancy between [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 **B. The First Mention of Any [REDACTED] Was a Hearsay Statement in a Meishe
19 Expert Report After the Close of Fact Discovery.**

20 Approximately ten days later, on April 25, 2025, Meishe served the Expert Report of Yanfang Wang,
21 a professor at East China University, whom Meishe proposes to have testify at trial about ownership rights
22 to the asserted code under Chinese law. Ex. K. According to her report, Prof. Wang claims [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26

27 ⁴ Fact discovery closed on April 11, 2025. See ECF 553. Defendants agreed to take Meishe's executive
28 depositions the following week as a courtesy due to scheduling constraints of Meishe and its counsel.

1 [REDACTED]
2 [REDACTED]
3 Following the submission of the Wang report, Meishe served an “errata” to Mr. Zheng’s deposition
4 transcript, which purports to [REDACTED]. See Ex. M. [REDACTED]

5 [REDACTED]
6 [REDACTED] *Id.* (addressing Ex. [REDACTED])

7 B at 124:4–6). [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED] Ex. M (addressing Ex. B. at 125:23–126:3).

12 The “errata” also [REDACTED]

13 [REDACTED]
14 [REDACTED] Ex. B at [REDACTED]
15 134:6–10. In the “errata,” Meishe adds: [REDACTED] Ex. M

16 (addressing Ex. B at 134:6–20). In response to the question, [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 [REDACTED] *Id.* (addressing Ex. B at 148:17–20).

25 **C. Meishe Repeatedly but Falsely Averred to the Court and to the Special Master That**
26 **It Independently Developed the Asserted Code.**

27 In addition to never disclosing this supposed [REDACTED] Meishe also repeatedly and falsely
28 represented to the Court, the Special Master, and Defendants that it independently developed the asserted

1 code until that story unraveled at the close of fact discovery. Meishe has alleged since the outset of the case
 2 that “Meishe developed” the asserted code and that “Plaintiff created these trade secrets.” ECF 6 at ¶¶ 54,
 3 147; ECF 9 at ¶¶ 54, 149. It also alleged, “Meishe developed the Meishe app,” which Meishe claimed was
 4 its “proprietary, *independently-developed* software code.” ECF No 235 at ¶¶ 54, 119 (emphasis added). In
 5 opposing Defendants’ motion to dismiss the Third Amended Complaint, Meishe reiterated to the Court that
 6 “Meishe created original works by developing the” asserted code. *See* ECF 260 at 9. The Court expressly
 7 referred to these representations in its order denying in part Defendants’ motion to dismiss. *See* ECF 429 at
 8 2 (“Meishe ‘developed the Meishe app and further developed the Meishe SDK’”) (citing ECF 235 at ¶¶ 53–
 9 54). The Court dismissed Meishe’s trade secret claims with leave to amend “to the extent they allege trade
 10 secrets beyond proprietary, independently-developed software code.” *Id.* at 26.

11 After the dismissal, Meishe amended again, continuing to plead that the source code at issue was
 12 Meishe’s “independently-developed registered and unregistered source code.” ECF 433 at ¶ 1; *see also id.*
 13 ¶¶ 74 (same), 149 (same). Meishe likewise told the Court in its motion to dismiss opposition that “Plaintiff’s
 14 *independently-developed* source code is copied verbatim into Defendants’ source code.” ECF 443 at 1
 15 (emphasis added); *see also id.* at 15 (“Defendants copied Plaintiff’s *original works*” and calling the code at
 16 issue Meishe’s “*original source code*” (emphases added)). At the hearing, Meishe’s counsel [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]

20 [REDACTED] Ex. N at 9:5–22, 32:8–16. The Court relied again on these
 21 representations. *See* ECF 465. at 2–4 (“Meishe developed the Meishe app and further developed the Meishe
 22 SDK” and referencing the “independently developed” code).

23 Defendants subsequently moved the Special Master to compel Meishe to produce technical
 24 documents and source code for XAT’s Dunhuang app. ECF 564 at 5. Defendants had located a 2016 public
 25 securities filing from XAT with the Hong Kong stock exchange suggesting that the Meishe app “[u]tiliz[es]
 26 [the] visual effects and video compositing technologies” and “[a] variety of templates” from XAT’s
 27 Dunhuang app. Ex. CC at 147–48 (“Meicam” is the same as “Meishe”). Defendants sought to discover
 28 which was correct—XAT’s securities filings or Meishe’s repeated representations to this Court.

1 Meishe opposed the motion by continuing to swear to the Special Master that the asserted code does
 2 not contain or use any code from XAT's Dunhuang app. Ex. O; *see also* Ex. P. Meishe submitted a
 3 declaration from its Chief Technology Officer, Liang Jian, in support of its opposition. *See* Ex. Q. Mr. Jian
 4 attested under penalty of perjury, "The Meishe software is independently developed from the ground up and
 5 no Dunhuang source code has been incorporated into the Meishe software." *Id.* at ¶ 3. Meishe's opposition
 6 relied on Mr. Jian's declaration [REDACTED]

7 [REDACTED]
 8 [REDACTED] Ex. O at 1; *see also* [REDACTED]

9 [REDACTED] *id.* [REDACTED]

10 [REDACTED] 5

11 Relying on Meishe's representations, the Special Master "ordered Meishe to produce only what it
 12 could find related to Dunhuang" and declined "to compel Meishe to obtain Dunhuang-related documents
 13 and code from XAT." ECF 564 at 3. Meishe then produced some code for the Dunhuang app that was time
 14 stamped in December 2016, and some technical and sales documents related to the Dunhuang app. *Id.* at 7.
 15 Meishe also served supplemental discovery responses [REDACTED]

16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED] Ex. DD at 8–9, 12. These responses were signed and verified

19 by Mr. Jian. *See id.* at 15.⁶

20 **D. Meishe Admitted Near the End of Fact Discovery That [REDACTED]**

21 Towards the end of fact discovery, several Meishe employees [REDACTED]

22 [REDACTED]
 23
 24 _____
 25 ⁵ Meishe's counsel also stated to the Special Master that the Dunhuang app [REDACTED]
 [REDACTED] Ex. EE at 27:24–28:6.

26 ⁶ The Special Master also had ordered Meishe to "identify all third-party libraries, frameworks, and other
 27 source code used in its" asserted code "by close of business on March 3, 2025." ECF No. 539 at 37. In
 28 these supplemental discovery responses, [REDACTED]
 [REDACTED] Ex. DD at 8, 12

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 Defendants then deposed Meishe's CTO, Mr. Jian. He admitted, contrary to [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 On April 18, 2025, Mr. Jian submitted a letter to the Special Master which stated: [REDACTED]
18 [REDACTED]
19 [REDACTED] Ex. S. He nonetheless was willing to sign "under penalty of perjury" his prior declaration stating
20 [REDACTED]
21 [REDACTED]
22 [REDACTED] Ex. Q at ¶¶ 2, 3.
23 Thereafter, Defendants renewed their motion to compel [REDACTED]
24 [REDACTED] See Ex. V at 4. As Defendants explained to the Special Master,
25 [REDACTED]
26 [REDACTED]
27 [REDACTED] See *id.* at 2, 4.
28

The Special Master agreed that “[t]he requested documents are relevant for the reasons Defendants have asserted” and granted Defendants’ motion on May 7, 2025. ECF 564 at 3, 9–10. The Special Master explained that his prior order had “relied in part on Liang Jian’s prior sworn statement that Dunhuang source code was not used in developing the Meishe app.” *Id.* at 14. But Mr. Jian admitted at his deposition that the prior declaration “was not accurate.” *Id.* The Special Master ordered Meishe to produce “[a]ll Dunhuang code that existed before development of the Meishe app began” and related technical documents by May 21, 2025. *Id.* at 18. Meishe objected to the order, *see* ECF 570, and only provided some Dunhuang source code and related technical documents.⁷ Meishe failed to produce any [REDACTED]

Although Defendants' experts have evaluated this material (only available on the eve of their expert report deadline) to the extent possible under the timeframe, Meishe's eleventh-hour production deprived Defendants of any chance to conduct further fact discovery on the case-critical issues—ownership, the viability and enforceability of Meishe's asserted copyrights and trade secrets, and damages—implicated by the fact that Meishe's code was derived from and still incorporates third-party Dunhuang code.

E. Meishe Concealed Documents Generated from Its Pre-Suit Investigation and Violated the Special Master’s Order Requiring Their Complete Production.

Meishe also alleged in its complaint that it conducted “an analysis between the code of Meishe app and that of TikTok app” that formed the basis for its claims. ECF 433 at ¶ 79. Specifically, Meishe alleged that it conducted “a comparison between decompiled ‘TikTok v8.5.0’ object code and decompiled ‘Meishe v2.5.4’ object code” which purportedly showed “identical names to Meishe’s copyrighted source code, including typographical errors.” *Id.* at ¶ 80.

Given Meishe's allegations, Defendants requested the decompiled object code and comparison files

⁷ Defendants responded to Meishe’s objection that the Special Master’s order was unwarranted. ECF 587. Defendants also recently objected to the Special Master’s denial of a separate motion for sanctions filed by Defendants for Meishe’s failure to sufficiently identify its asserted code and Defendants’ accused code. See ECF 580. These recent filings address issues that are separate from Meishe’s misconduct addressed in this Motion and would be mooted if the Court grants Defendants’ request for case terminating sanctions.

1 *See* Ex. P. Meishe represented that it used a software program called IDA Pro to decompile the relevant files
 2 and only used screenshots from the software window as the basis for the complaint allegations. *Id.* Meishe
 3 claimed to have done so without “generat[ing] files of decompiled object code.” *See id.*

4 Again, Defendants moved to compel, and again, [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]

8 Nevertheless, the Special Master granted Defendants’ motion to compel and ordered Meishe to
 9 produce “decompiled object code and compiled application code for the Meishe apps and SDK,” including
 10 any IDA Pro comparison files. ECF 531 at 13–14. In response, Meishe produced decompiled object code
 11 [REDACTED]. *See* Ex. AA.

12 Meishe’s production still did not contain [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]

20 III. LEGAL STANDARD

21 “District courts have inherent power to impose sanctions for ‘conduct which abuses the judicial
 22 process.’” *Yu v. ByteDance Inc.*, 759 F. Supp. 3d 992, 999 (N.D. Cal. Dec. 12, 2024) (quoting *Chambers v.*
 23 *NASCO, Inc.*, 501 U.S. 32, 44–45 (1991)). These sanctions can include dismissing the action, evidentiary
 24 sanctions (e.g., evidence preclusion or adverse inferences), or monetary sanctions. *See, e.g., Otsuka v. Polo*
 25 *Ralph Lauren Corp.*, 2010 WL 366653, at *3 (N.D. Cal. Jan. 25, 2010) (collecting cases).

26 Federal Rule of Civil Procedure 37(b) authorizes these same sanctions against a party who “fails to
 27 obey an order to provide or permit discovery.” *Facebook, Inc. v. OnlineNIC Inc.*, 2022 WL 2289067, at *8
 28 (N.D. Cal. Mar. 28, 2022), *rep. and rec. adopted*, 2022 WL 17371092 (N.D. Cal. Oct. 17, 2022). Rule

1 37(c)(1) also authorizes the same sanctions “for failure to produce information under Rules 26(a) or 26(e)”
 2 or when a party fails to supplement discovery responses “if the party learns that in some material respect
 3 the disclosure or response is incomplete or incorrect.” *Id.* Rule 37(c)(1) gives courts “particularly wide
 4 latitude” to sanction discovery misconduct. *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101,
 5 1106 (9th Cir. 2001). Rule 37(b) similarly “provides a wide range of sanctions for a party’s failure to comply
 6 with court discovery orders.” *United States v. Sumitomo Marine & Fire Ins. Co.*, 617 F.2d 1365, 1369 (9th
 7 Cir. 1980). “[T]he party facing [Rule 37] sanctions bears the burden of proving that its failure to disclose
 8 the required information was substantially justified or is harmless.” *R&R Sails, Inc. v. Ins. Co. of Penn.*, 673
 9 F.3d 1240, 1246 (9th Cir. 2012).

10 **IV. ARGUMENT**

11 “Where a party so damages the integrity of the discovery process that there can never be assurance
 12 of proceeding on the true facts, a case dispositive sanction may be appropriate.” *Valley Eng’rs Inc. v.*
Electric Eng’g Co., 158 F.3d 1051, 1058 (9th Cir. 1998). So it is here. Meishe’s pervasive misconduct—
 14 including its failure to identify the supposed [REDACTED] on which it now seeks to rely, [REDACTED]
 15 [REDACTED], and repeated material misrepresentations and false declarations about the
 16 ownership and development of the disputed code and IP throughout the many years of this lawsuit—has
 17 irreparably prejudiced Defendants. That Defendants have needlessly spent substantial resources pursuing
 18 discovery that Meishe should have produced at the outset of the case, instead of denying its existence, is the
 19 least of the harm. Far worse, Meishe’s evasions and falsehoods have made it impossible to discover the
 20 truth, and “[t]here is no point to a lawsuit, if it merely applies law to lies.” *Id.* (“True facts must be the
 21 foundation for any just result.”). With fact discovery closed, expert discovery underway, and trial
 22 commencing in four months, there is no further discovery to be had.

23 Nor could a mere extension suffice. This case has been litigated for years at significant expense to
 24 Defendants. After all that time, Meishe now seeks to base its ownership claims on a supposed decade-old
 25 [REDACTED] that it either
 26 (1) actively and purposefully concealed during fact discovery, or (2) simply made up after the fact. And the
 27 hearsay sources of this late-breaking [REDACTED] are the very witnesses who have shown a repeated
 28 willingness to submit false statements under oath. This “pattern of deception and discovery abuse ma[ke] it

1 impossible for the district court to conduct [a] trial with any reasonable assurance that the truth would be
 2 available," leaving termination as the appropriate recourse. *Conn. Gen. Life Ins. Co. v. New Images of*
 3 *Beverly Hills*, 482 F.3d 1091, 1097 (9th Cir. 2007).

4 **A. Terminating Sanctions Are Warranted for Meishe's Serial Misrepresentations on**
Core Issues and the Resulting Insurmountable Prejudice to Defendants.

5 In deciding whether to impose terminating sanctions under the Court's inherent power or Rules
 6 37(b)&(c), courts consider the following factors: "(1) the public's interest in expeditious resolution of
 7 litigation; (2) the court's need to manage its dockets; (3) the risk of prejudice to the party seeking sanctions;
 8 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic
 9 sanctions." *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 958 (9th Cir. 2006) (courts' inherent power); *see also*
 10 *Facebook*, 2022 WL 2289067, at *8 (same framework under Rule 37(b)); *Thompson v. Hous. Auth. of City*
 11 *of L.A.*, 782 F.2d 829, 831 (9th Cir. 1986) (same for Rule 37(c)(1)(C)). "Courts should not apply these
 12 factors mechanically," *Facebook*, 2022 WL 2289067, at *8, and need not make findings regarding each
 13 factor, so long as "willfulness, fault, or bad faith" is found. *Leon*, 464 F.3d at 958. Those findings are
 14 afforded "great deference." *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1366 (9th Cir. 1990).

15 1. Meishe's Willful, Bad Faith Misconduct Concerning Core Issues of Ownership and
Development of the Asserted Source Code Warrants Terminating Sanctions.

16 "[I]t is well-settled that fabricating and submitting knowingly false evidence amounts to willful and
 17 bad faith conduct." *Am. Rena Int'l Corp. v. Sis-Joyce Int'l Co.*, 2015 WL 12732433, at *5 (C.D. Cal. Dec.
 18 14, 2015). "[P]erjury on any material fact strikes at the core of the judicial function and warrants a dismissal
 19 of one's right to participate at all in the truth seeking process." *Arnold v. Cnty. of El Dorado*, 2012 WL
 20 3276979, at *4 (E.D. Cal. Aug. 9, 2012); *see also*, e.g., *Vogel v. Tulaphorn, Inc.*, 2013 WL 12166212, at
 21 *4, 12 (C.D. Cal. Nov. 5, 2013), *aff'd*, 637 F. App'x 344 (9th Cir. 2016) ("When a party falsifies evidence
 22 of central importance to a case, this shows bad faith, willfulness, or fault.").

23 Courts thus have issued terminating sanctions where a party submitted false declarations or violated
 24 discovery orders. In *Uribe v. McKesson*, the court terminated the case after the plaintiff submitted one false
 25 declaration in support of a summary judgment motion. 2011 WL 3925077, at *5 (E.D. Cal. Sept. 7, 2011).
 26 In *The Sunrider Corp. v. Bountiful Biotech Corp.*, the court issued terminating sanctions against a party who
 27 "ma[d]e false statements under oath or penalty of perjury," and "repeatedly and willfully disregarded his
 28

1 discovery obligations and disobeyed court orders to provide or permit discovery.” 2010 WL 4590766, at
 2 *22 (C.D. Cal. Oct. 8, 2010), *rep. and rec. adopted*, 2010 WL 4589156 (C.D. Cal. Nov. 3, 2010).

3 Terminating sanctions likewise are warranted here. Meishe’s willful, bad faith deception and
 4 misconduct—effectuated by its most senior executives on multiple, material issues affecting the merit and
 5 veracity of Meishe’s claims—amply justifies this relief.

6 a) *Whether the [REDACTED] theory that Meishe seeks to present at trial
 7 was actively concealed during fact discovery or concocted thereafter, it
 constitutes willful, bad faith misconduct worthy of case termination.*

8 There is abundant reason to believe that Meishe’s supposed [REDACTED] is pure fiction. It
 9 depends upon the strained, if not absurd, notion that [REDACTED]
 10 [REDACTED]
 11 [REDACTED] in any of the subsequent written agreements entered into between XAT and Meishe.
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]

15 Even if such an [REDACTED] did exist, Meishe’s repeated failure to disclose it—and indeed, its
 16 active concealment of it—during this long litigation was indisputably willful. There is no other explanation
 17 for (i) why such a critical “fact” was not forthrightly alleged in the Complaint four years ago (or in any of
 18 the many Amended Complaints Meishe filed thereafter); (ii) why it was not identified [REDACTED]
 19 [REDACTED]
 20 [REDACTED]

21 [REDACTED], Ex. E at 81–82; (iii) why it was not disclosed in response to the Special Master’s order
 22 directing Meishe to submit a declaration identifying “whether any documents or agreements exist that bear
 23 on the terms of Meishe’s separation from XAT . . . including any documents addressing intellectual
 24 property as between Meishe and XAT,” ECF 519 at 32; or (iv) why Meishe’s CEO, Mr. Zheng, testified
 25 that [REDACTED]
 26 [REDACTED]

27 Whatever may have been Meishe’s motivation for its extensive and repeated deceit—whether
 28 because no [REDACTED] existed and the claim was invented after Meishe recognized the October 2015

1 Transfer Agreement would be insufficient to support its case, whether because of a calculated effort to
 2 protect the Chinese company XAT from U.S. discovery, or some combination of both—there can be no
 3 question that the deceit was purposeful. That Meishe felt the need to make fundamental, substantive changes
 4 to its CEO’s sworn testimony through its [REDACTED]
 5 [REDACTED]
 6 [REDACTED]

7 [REDACTED]—plainly demonstrates that even Meishe understands that the CEO’s testimony (assuming the
 8 [REDACTED] story is true, as Meishe now apparently wants to try to argue to the jury) was indefensibly
 9 inaccurate as given. Likewise, the self-evidently suspicious timing—mentioning the [REDACTED] for
 10 the first time only after fact discovery had concluded, when Defendants would no longer be able to discover
 11 and challenge the facts surrounding this claim—supports only one inference: the elaborate and lengthy
 12 concealment was intentional.

13 Had Meishe properly identified the supposed [REDACTED] during fact discovery, Defendants
 14 would have investigated the claim, including, for example, by examining persons with knowledge of the
 15 purported agreement and its negotiation, including representatives of the supposed third-party XAT;
 16 discovering the precise metes and bounds of the supposed [REDACTED] as well as any consideration
 17 given for the supposed transfer of this allegedly valuable IP; and discovering all pertinent consistent or
 18 inconsistent facts that might bear upon the veracity of whether any such [REDACTED] was truly made.
 19 Having denied Defendants the opportunity to take such critical discovery through misinformation and
 20 falsehoods, Meishe forfeited the opportunity to present this strained claim to a jury.

21 It is beyond debate that the ownership issues implicated by the alleged [REDACTED] are highly
 22 consequential to this case, implicating the core issue of whether Meishe owns the asserted trade secrets and
 23 copyrights now and whether it did so at the time the code was allegedly taken, as well as the scope of the
 24 asserted IP rights. To prove its trade secret claim, Meishe must establish that it “owned the trade secret” and
 25 that “at the time of misappropriation, the information was a trade secret.” *Vox Network Sols., Inc. v. Gage*
 26 *Techs., Inc.*, 2024 WL 1260573, at *3 (N.D. Cal. Mar. 25, 2024). To establish copyright infringement,
 27 Meishe must similarly prove “ownership of a valid copyright, and (2) copying of constituent elements of
 28 the work that are original.” *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991). This burden

1 is more significant where, as here, Meishe asserts not U.S. copyrights (the registration of which would
 2 constitute *prima facie* evidence of validity and ownership per 17 U.S.C. § 410(c)), but Chinese copyrights
 3 which carry no such evidentiary presumption.

4 Defendants, who obviously had no reason to investigate an [REDACTED] claim they had not been
 5 told about, should not be forced to proceed to trial in a case where Meishe's misconduct has made finding
 6 the truth an impossible task. This is especially true where proof of the existence of the purported [REDACTED]

7 [REDACTED] depends on the testimony of Meishe's CEO and CTO, apex witnesses who have already
 8 demonstrated a willingness to testify falsely. Meishe's deceit on this issue is so grave that it strikes at the
 9 core of the judicial process and undermines the integrity of the "truth seeking process" of litigation. *Arnold*,
 10 2012 WL 3276979, at *4. Like the party sanctioned in *Valley Engineers*, Meishe's "conduct in the litigation
 11 has cast such a pall upon [its] integrity and upon a fair and just resolution on the merits that no alternative
 12 sanction could be effective." 158 F.3d at 1058. Case terminating sanctions are warranted.

13 b) *Meishe's false representations that it "independently developed" the*
 14 *asserted code Meishe [REDACTED] constitutes willful, bad faith misconduct justifying terminating sanctions.*

15 Similar to the ownership issue, at every turn, Meishe represented that it independently developed
 16 the asserted code and that no Dunhuang app code was in the asserted code. But at the close of fact discovery,
 17 Meishe's CTO, Mr. Jian, revealed [REDACTED]

18 [REDACTED]⁸ Meishe's falsehoods
 19 and concealment concern the core issues of (1) ownership of the asserted copyrights and trade secrets,
 20 (2) what measures, if any, were taken to protect the secrecy of the asserted source code, and (3) how much,
 21 if any, of the code was developed by Meishe (versus XAT). These are elements that Meishe has the burden
 22 to prove. *See MAI Sys. Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 522 (9th Cir. 1993) ("[A] plaintiff who
 23 seeks relief for misappropriation of trade secrets must identify the trade secrets and carry the burden of
 24

25 ⁸ False declarations submitted to a Special Master appointed by the Court to govern discovery have the
 26 same effect as if they were submitted to the Court for purposes of issuing sanctions. *See, e.g., In re*
Facebook, Inc. Consumer Priv. User Profile Litig., 655 F. Supp. 3d 899, 917–18 (N.D. Cal. 2023)
 27 (sanctions based on court findings that the party and its attorneys delayed litigation by improperly
 28 complying with the Special Master's orders); *Madrid v. Woodford*, 2004 WL 2623924, at *2 (N.D. Cal.
 Nov. 17, 2004) (issuing sanctions based on false statements made to Special Master).

1 showing that they exist.”); *see also* 18 U.S.C. § 1839(3) (requiring “owner” to take “reasonable measures
2 to keep [the asserted trade secret] secret”).

3 Meishe’s false representations about the development and content of the asserted source code
4 warrant terminating sanctions under Rule 37(c) and the Court’s inherent power. In *Vogel*, the district court
5 found that falsified declarations where “a party affirmatively misrepresented facts of central importance to
6 the case that it knew not to be true” warranted terminating sanctions. *Vogel*, 2013 WL 12166212, at *7. In
7 particular, the Court found that the plaintiff and its counsel had “attempted to convince not just Defendant,
8 but also the Court, that Plaintiff had standing to pursue the instant case.” *Id.*

9 Here, Meishe’s false assertions of independent development and concealment of the true contents of
10 the asserted code strike at the core of its claims. If, as is now clear, Meishe did not originally develop the
11 code, Defendants were entitled to discover XAT’s development of the Dunhuang app code present in the
12 asserted code, compare the Dunhuang app code to the asserted code, and assess which remaining portions
13 of the asserted code (if any) contain sufficient creative expression to be copyrightable. Further, while Meishe
14 provided some limited interrogatory responses on [REDACTED]

15 [REDACTED] *see* Ex. FF at 10–13, Defendants were entitled to discover whether XAT took any
16 measures to protect the secrecy of XAT’s Dunhuang app code present in the asserted code. Additionally,
17 understanding which code originated at XAT and which (if any) at Meishe could have profound implications
18 for Meishe’s massive damages claim. If Meishe made insubstantial changes to the [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 Had Meishe accurately represented its code development history, Defendants would have pursued
22 critical discovery, including deposing Meishe’s witnesses to understand how, when, and by whom the
23 Dunhuang code contained in the asserted code was developed, whether it was derived from other code, and
24 how much of it was publicly available. And while the Special Master recently ordered Meishe to produce
25 Dunhuang app source code and related technical documents, ECF 564,⁹ this material comes well after the
26

27 ⁹ In response to a prior order from the Special Master, ECF 532, Meishe only produced [REDACTED]
28 [REDACTED]

1 close of fact discovery and Meishe's opening expert reports, thus depriving Defendants of the ability to
 2 pursue follow up discovery with Meishe (or XAT) or examine Meishe witnesses with the benefit of having
 3 the code in hand to test their assertions about the extent of their copying from XAT. Moreover, this belated
 4 production does nothing to cure Meishe's repeated falsehoods about its alleged independently developed
 5 code, which go to the heart of whether Meishe has enforceable rights to it *at all*. Falsehoods on facts so
 6 material to the case warrant terminating sanctions. *Arnold*, 2012 WL 3276979, at *12.

7 c) *Meishe's acknowledgement that* [REDACTED]

8 [REDACTED] *amounts*
 9 *to willful, bad faith misconduct warranting terminating sanctions.*

10 Meishe's concealment of the decompiled code and comparison file from its purported pre-suit
 11 investigation—which directly violated the Special Master's order—undermined Defendants' ability to
 12 prepare their defenses and consider mitigation damages by discontinuing use of allegedly infringing code,
 13 and otherwise casts doubt on whether Meishe had a good faith basis to file this suit. Notably, Meishe
 14 performed this comparison to evaluate whether to sue Defendants and thus unquestionably should have
 15 preserved and produced it at the outset of this case instead of repeatedly concealing its existence.

16 At the close of fact discovery, Meishe's CTO revealed that [REDACTED]

17 [REDACTED]
 18 Meishe withheld this document in direct violation of the Special Master's order, *see* ECF
 19 531, even though Meishe's CTO admitted that [REDACTED]
 20 Ex. R at 147:20–148:4. While Meishe produced the comparison file after Mr. Jian's deposition, Meishe's
 21 concealment hampered Defendants' ability to evaluate Meishe's copyright and trade secret claims during
 22 fact discovery and to determine whether the asserted code was present in the accused code. Indeed, had
 23 Meishe disclosed its code comparison at the outset of the case, Defendants could have evaluated the extent
 24 to which any asserted code was present in its services and ameliorated the situation (if needed) to
 25 dramatically limit the scope of alleged damages. Meishe's deceit concerning its pre-suit diligence rendered
 26 that impossible. Terminating sanctions thus are warranted under (1) Rule 37(b) for Meishe's violation of
 27 the Special Master's order, (2) Rule 37(c) for Meishe's failure to disclose this critical discovery, and (3) the
 28 Court's inherent power. *Yu*, 759 F. Supp. 3d at 999; *Facebook*, 2022 WL 2289067, at *8.

CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2025, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing via electronic mail to all counsel of record. I further certify that the foregoing document and all supporting sealed attachment(s) have been provided to all counsel of record via secure FTP delivery on the same day of the filing.

/s/ Kurt G. Calia

Kurt G. Calia

1 * * *

2 Each of the above courses of conduct is sufficient, by itself, to warrant the sanction of terminating
 3 this case. Together, they compel it, demonstrating beyond cavil that this was no isolated error, but instead a
 4 litigation strategy premised on doing what you can get away with instead of fidelity to the truth. Courts
 5 faced with such, or even less, severe misconduct have issued terminating sanctions. For example, in
 6 *Connecticut General Life*, the Ninth Circuit upheld terminating sanctions when a party refused to answer
 7 questions, responded to discovery in a way that appeared “calculated to prevent plaintiffs from learning and
 8 proving the truth,” claimed that records were misplaced or lost, and did not reply or confess that they made
 9 false misstatements of fact. 482 F.3d at 1095–97. Defendants request that the Court do the same for Meishe’s
 10 pattern of misconduct, which has persisted throughout the case.

11 2. The Five *Leon* Factors Further Support Issuing Terminating Sanctions.

12 Examining this record through the lens of the five *Leon* factors leads to the same conclusion.

13 a) The Public and Court Interest Factors Support Termination.

14 The first and second *Leon* factors, which are “often considered together,” concern the interest of the
 15 public and the Court and, “as in most cases” involving severe discovery misconduct, violations of discovery
 16 orders, or the submission of false declarations, favor termination. *Moonbug Ent. Ltd. v. Babybus (Fujian)*
 17 *Network Tech. Co., Ltd.*, 2023 WL 11922843, at *4 (N.D. Cal. Oct. 31, 2023); *see also Wanderer v.*
 18 *Johnston*, 910 F.2d 652, 656 (9th Cir. 1990). Indeed, both factors are satisfied where the misconduct
 19 “delayed the expeditious resolution of litigation.” *Moonbug*, 2023 WL 11922843, at *4. In *Moonbug*, for
 20 example, these factors favored termination when the misconduct required the other party to repeatedly
 21 expend resources seeking critical discovery and pursuing numerous discovery motions. *Id.*

22 Meishe’s misconduct resulted in needless delay and costs for Defendants, the Special Master, and
 23 the Court. Defendants were forced to pursue several motions to compel, including for the production of
 24 XAT documents, Dunhuang app code, and the materials from Meishe’s pre-suit investigation. Doing so
 25 impeded and distracted Defendants’ ability to discover relevant facts and develop its defenses to Meishe’s
 26 claims. Meishe’s misconduct amounts to abuse of the judicial process, and warrants terminating sanctions.

b) The Prejudice to Defendants Factor Supports Termination.

“In deciding whether to impose case-dispositive sanctions, the most critical factor is not merely delay or docket management concerns, but truth.” *Conn. Gen. Life*, 482 F.3d at 1097. “Falsified evidence substantially prejudices an opposing party by casting doubt on the veracity of all of the culpable party’s submissions throughout litigation.” *Yu.*, 759 F. Supp. 3d at 1001. Moreover, a defendant suffers prejudice when the misconduct “threaten[s] to interfere with the rightful decision of the case.” *Anheuser-Busch, Inc. v. Nat. Beverage Distrib.*, 69 F.3d 337, 348 (9th Cir. 1995). Courts have awarded terminating sanctions when the plaintiff so damaged “the integrity of the discovery process that there can never be assurance of proceeding on true facts.” *Loop AI Labs Inc. v. Gatti*, 2017 WL 934599, at *14 (N.D. Cal. Mar. 9, 2017).

By any objective measure, Meishe’s misconduct, including repeated falsehoods from its apex executives, has enabled Meishe to evade the truth, casts doubt on the veracity of its submissions, and threatens to undermine the rightful decision in the case, such that neither Defendants nor “the Court nor the public can trust the veracity of further discovery collected from” Meishe. *See CrossFit, Inc. v. Nat’l Strength & Conditioning Ass’n*, 2019 WL 6527951, at *19 (S.D. Cal. Dec. 4, 2019).

The magnitude of Meishe's misconduct is perhaps best illustrated by its senior executives, on whose testimony Meishe's case depends. They submitted multiple sworn statements on core issues pertaining to ownership of the rights to the asserted code, the contents of the asserted code, and whether the asserted code qualifies as a trade secret. That Meishe either made up the [REDACTED] or concealed it with repeated falsehoods throughout the period of fact discovery, is particularly insidious; for the reasons stated, it would be the height of prejudice to allow Meishe to present such a strained and unverifiable claim to a jury when Defendants were denied the opportunity to take discovery to challenge it. Meishe's misconduct has so irreparably tainted the integrity of these proceedings that only terminating sanctions can cure the prejudice.

c) *The Public Policy Factor Favors Termination.*

The fourth *Leon* factor, that public policy favors resolution on the merits, “lends little support to a party whose conduct impeded progress toward disposition on the merits.” *Sec. & Exch. Comm’n v. Blockvest, LLC*, 2020 WL 1910355, at *15 (S.D. Cal. Apr. 20, 2020), *rep. and rec. adopted*, 2020 WL 2786869 (S.D. Cal. May 29, 2020) (finding this factor “neutral” in light of party’s filing of false and forged declarations at the outset of the case). Thus, this factor—standing alone—does not preclude the imposition

of sanctions in this case. *See Uribe*, 2011 WL 3925077, at *5 (public policy factor favors dismissal where “Plaintiff’s own misconduct . . . stalled the case”).

Meishe’s misconduct precluded Defendants’ from obtaining critical discovery necessary to defend against Meishe’s claims, thus casting doubt on the ability of any resolution on the true merits. Meishe disclosed its new [REDACTED] ownership theory *after fact discovery ended*, thus impeding Defendants’ ability to defend Meishe’s claims of ownership of the asserted copyrights and trade secrets on the merits. Further, as to Meishe’s falsehoods about the Dunhuang code, although the Special Master recently ordered Meishe to produce such code, its production after the close of fact discovery and after opening expert reports, has deprived Defendants of the ability to obtain any testimony about it or pursue follow-up discovery, including on such issues as its purported value, its functionality, and the extent to which it differs, if at all, from the code Meishe accuses Defendants of infringing and misappropriating. Meishe’s serial misrepresentations about Dunhuang code caused this unfortunate timing. Any resolution on the merits thus has been tainted by Meishe’s concealment of the truth throughout the case of the ownership and development of the asserted source code, whether it qualifies for trade secret and copyright protection, and Meishe’s purported pre-suit investigation that brought Meishe to file the lawsuit as a threshold matter.

d) The Availability of Lesser Sanctions Factor Favors Termination.

“What is most critical for case-dispositive sanctions, regarding risk of prejudice and of less drastic sanctions, is whether the discovery violations threaten to interfere with the rightful decision of the case.” *Valley Eng’rs.*, 158 F.3d at 1057. “A court cannot rightfully decide a case when a party’s pattern of deception and discovery abuse make it impossible for the district court to conduct a trial with any reasonable assurance that the truth would be available. . . . When a party repeatedly lies under oath, this constitutes a pattern of deception sufficient to impose terminating sanctions rather than lesser sanctions.” *Vogel*, 2013 WL 12166212, at *12; *see also Anheuser-Busch*, 69 F.3d at 352 (“It is appropriate to reject lesser sanctions where the court anticipates continued deceptive misconduct.”).

Meishe's alleged ownership and development of the asserted source code underlying its copyright and trade secret claims depend entirely on the testimony of its CEO and CTO. The record is clear: their testimony and sworn declarations are [REDACTED] Mr. Zheng testified unequivocally at his deposition that [REDACTED]

1 [REDACTED]. Far from being a salve, Meishe's submission of the wildly improper "errata"
 2 seeking to [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]

9 In *Indiezone, Inc. v. Rooke*, the court considered whether lesser sanctions were appropriate but issued
 10 terminating sanctions in view of the plaintiff's submission of false declarations and fraudulent documents
 11 to the court. There, as here, the misrepresentations obfuscated "the heart of the case, namely the parties
 12 involved and the owner of the IP, which is the subject of the dispute." 2014 WL 4354122, at *4 (N.D. Cal.
 13 Sept. 2, 2014). Further, courts have found that terminating sanctions, as opposed to lesser sanctions, such
 14 as evidence preclusion or adverse inferences, are appropriate when, as here, discovery had closed. The court
 15 in *Blockvest*, for example, ruled that terminating sanctions were more appropriate compared to evidentiary
 16 and monetary sanctions where "[d]iscovery ha[d] closed and deponents whose [false] declarations are at
 17 issue have been deposed." 2020 WL 1910355, at *16. The court further reasoned that "evidence preclusion
 18 sanctions would not deter [the sanction parties'] misconduct and would place [the sanctioned parties] in the
 19 same position they were in before filing the false and forged declarations." *Id.* at *17.

20 Meishe's misconduct has prevented Defendants from "hav[ing] access to the true facts" in this case,
 21 so terminating sanctions are appropriate. *See, e.g., Conn. Gen. Life*, 482 F.3d at 1097 (affirming terminating
 22 sanctions where the party repeatedly lied to the court and obstructed discovery). In addition, given the
 23 severity of Meishe's misconduct, Defendants request that the Court allow Defendants to submit a fee
 24 petition in support of monetary sanctions if the Court issues terminating or evidentiary sanctions. *See, e.g.,*
 25 *Skyline Advanced Tech. Servs. v. Shafer*, 2020 WL 13093877, at *12 (N.D. Cal. July 14, 2020), *rep. and*
 26 *rec. adopted*, 2020 WL 13093878 (N.D. Cal. July 30, 2020).

B. In the Alternative, Evidentiary Sanctions Are Warranted.

At a minimum, severe evidentiary sanctions are warranted against Meishe for the material falsehoods it perpetuated throughout this case and the resulting undue prejudice to Defendants. “Appropriate sanctions short of dismissal may include exclusion of the disputed evidence, an adverse inference jury instruction, or monetary sanctions.” *Otsuka*, 2010 WL 366653, at *3. The Court’s inherent power to issue sanctions “include broad discretion to make discovery and evidentiary rulings conducive to the conduct of a fair and orderly trial.” *Somers v. Digital Realty Tr. Inc.*, 2018 WL 2134020, at *15 (N.D. Cal. May 9, 2018); *see also Innospan Corp. v. Intuit Inc.*, 2011 WL 2669465, at *2 (N.D. Cal. July 7, 2011) (citing Fed. R. Civ. P. 37(b)(2)(A)(ii)); Fed. R. Civ. P. 37(c)(1)(C) (“If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.”).

In *Innospan*, the court imposed preclusion sanctions where a plaintiff willfully directed a witness to submit a declaration that “contained statements that [the witness’] later deposition demonstrate[d] are false,” coached witnesses on what to say at depositions, and made false statements in his complaint. 2011 WL 2669465, at *4, 6. In *National Casualty Co. v. National Strength and Conditioning Association*, the court awarded several evidentiary sanctions after finding that the sanctioned party submitted a declaration containing false statements and withheld relevant documents from production. 2020 WL 3498169, at *3-4 (S.D. Cal. June 29, 2020). Similarly, in *ConsumerDirect, Inc. v. Pentius LLC*, the court issued evidentiary sanctions in the form of an adverse inference instruction to the jury based on the plaintiff’s submission of falsehoods in sworn declarations and in depositions. 2023 WL 8876198, at *9 (C.D. Cal. Sept. 21, 2023).

Here, should this Court decide not to terminate the case, Defendants respectfully request that the Court issue the following evidentiary sanctions:

1. Preclude Meishe from presenting any evidence related to the supposed [REDACTED] never disclosed in discovery.

Meishe unveiled the supposed [REDACTED] in an opening expert report after fact discovery closed. Meishe never mentioned any purported [REDACTED] in response to Defendants' on-point interrogatory or in any other discovery response. Further, no Meishe witness—including its CEO and CTO—ever mentioned any such [REDACTED] at deposition. Defendants therefore had *zero*

1 opportunity, and indeed no reason, to pursue any discovery of the supposed [REDACTED] Instead,
 2 Meishe identified the [REDACTED]
 3 [REDACTED]
 4 [REDACTED] Defendants respectfully request that the Court, pursuant to Rule 37(c)(1) or the
 5 Court's inherent power, order that Meishe be limited to what it disclosed in fact discovery, and specifically
 6 (1) preclude Meishe from presenting any evidence related to the purported [REDACTED] and (2) deem
 7 admitted that the [REDACTED]
 8 [REDACTED].

9 2. Deem admitted that the entirety of the asserted code was copied unlawfully from
 10 [REDACTED] and that [REDACTED]

11 Meishe's [REDACTED] theory also proclaims that Meishe obtained from XAT " [REDACTED]
 12 [REDACTED]. Ex. K at ¶ 17.

13 Not only did Meishe fail to disclose the alleged [REDACTED] during fact discovery, Meishe also
 14 concealed, via false declarations by its CTO, that [REDACTED]
 15 [REDACTED]. Having misrepresented that [REDACTED]
 16 [REDACTED]

17 [REDACTED] Defendants further request that, under Rule 37(c)(1) or its inherent power, the Court
 18 deem admitted that Meishe did not obtain rights [REDACTED]

19 3. Preclude Meishe from offering any evidence concerning measures taken to protect
the secrecy of the asserted code [REDACTED].

20 Due to Meishe's misconduct, only at the very end of fact discovery did Defendants learn that
 21 Meishe [REDACTED]
 22 [REDACTED] To perpetuate their narrative of independent development, Meishe's
 23 CTO submitted a [REDACTED] As a result,
 24 Defendants were not able to pursue case critical discovery, including, for example, deposing Meishe and
 25 XAT witnesses to understand how, when, and by whom the [REDACTED]
 26 was developed, whether it was derived from other code, and how much of it was publicly available.
 27 Further, given Meishe's misrepresentations about the Dunhuang code, the discovery record is devoid of
 28

1 evidence of what reasonable measures were taken to protect the secrecy of the [REDACTED]
 2 [REDACTED]. Defendants thus request that, per Rule 37(c)(1) or its inherent powers, the Court
 3 preclude Meishe from presenting any evidence concerning measures to protect the secrecy of the asserted
 4 code.

5 4. Deem admitted that Meishe's pre-suit comparison of decompiled object code for
the TikTok app and Meishe app demonstrated no infringement or misappropriation.

6 Meishe violated the Special Master's order during fact discovery by withholding from production
 7 [REDACTED] from its pre-suit comparison of the decompiled object code for the
 8 TikTok app and the Meishe app. By withholding this discovery in violation of the Special Master's order,
 9 which Defendants only learned at the close of fact discovery, Meishe irreparably impaired Defendants'
 10 ability to evaluate the basis of Meishe's copyright and trade secret claims at the outset of the case. Had
 11 Meishe complied with its discovery obligations and produced it, Defendants could have analyzed whether
 12 the asserted code was present in its accused apps and ameliorate the dispute (if needed) to limit the scope
 13 of alleged liability. Accordingly, Defendants request that, under Rules 37(b)(2)(A) & (c)(1) and the
 14 Court's inherent powers, the Court deem admitted that Meishe's pre-suit comparison demonstrated no
 15 copyright infringement or trade secret misappropriation.

16 **V. CONCLUSION**

17 For the foregoing reasons, Defendants respectfully request that the Court issue terminating
 18 sanctions, or in the alternative, evidentiary sanctions, against Meishe. Should the Court grant this motion in
 19 whole or in part, Defendants also request to submit a fee petition in support of monetary sanctions.

21 Dated: June 16, 2025

22 Respectfully submitted,

23 /s/ Kurt G. Calia _____

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CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2025, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing via electronic mail to all counsel of record. I further certify that the foregoing document and all supporting sealed attachment(s) have been provided to all counsel of record via secure FTP delivery on the same day of the filing.

/s/ Kurt G. Calia

Kurt G. Calia